

REMARKS

The Office Action of May 2, 2006 has been received and reviewed. Claims 1, 7, 10, 12, and 14 through 16 are pending. Claims 2 through 6, 8, 9, 11, 13, and 17 through 24 were previously canceled herein. None of the claims have been amended. All of the pending claims stand rejected. Reconsideration is respectfully requested.

1. Claims 1, 7, 10, 12, and 14 through 16 and 35 U.S.C. § 112, 1st ¶

Applicants acknowledge the Examiner's withdrawal of the prior enablement rejection of claims 1, 7, 10, 12, and 14 through 16.

Claims 1, 7, 10, 12, and 14 through 16 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. Specifically, it was asserted that even though a Budapest Treaty Declaration had been submitted the application did not include the full name of the deposit institution, deposit address, and date of deposit of the PER.C6™ cells. Applicants have amended paragraph [0044] as suggested by the Examiner and respectfully request withdrawal of the 35 U.S.C. § 112, first paragraph, rejections.

2. Claims 1, 7, 10, 12, and 16 and 35 U.S.C. § 103(a)

Applicants acknowledge the Examiner's withdrawal of the prior obviousness rejection of claims 1, 7, 10, 12, and 16.

Claims 1, 7, 10, 12, and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Burk *et al.* (WO 91/15573) (hereinafter "Burk") in view of either of the Pau *et al.* references (U.S. 2006/0051747 and U.S. 2006/0063261) (hereinafter collectively "the Pau references"). Applicants respectfully traverse these rejections as hereinafter set forth.

As noted by the Examiner, the Pau references could only qualify as prior art under 35 U.S.C. § 102(e). 35 U.S.C. § 103(c) applies to applicants' application 10/698,086 as applicants' application has a priority date of May 7, 2001.

Applicant's application 10/698,086 and U.S. 2006/0051747 were, at the time the invention of application 10/698,086 was made, owned by Crucell Holland B.V.

Applicant's application 10/698,086 and U.S. 2006/0063261 were, at the time the invention of application 10/698,086 was made, owned by Crucell Holland B.V.

The above statements alone are sufficient evidence to disqualify the Pau references from being used in a rejection under 35 U.S.C. § 103(a) against the claims of applicants' application. *See M.P.E.P. § 706.02(l).* Therefore, withdrawal of the 35 U.S.C. § 103(a) rejections of claims 1, 7, 10, 12, and 16 is respectfully requested.

3. Claims 1, 7, 12, and 14 through 16 and 35 U.S.C. § 103(a)

Claims 1, 7, 12, and 14 through 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Burk *et al.* (WO 91/15573) (hereinafter "Burk") in view of either of the Pau *et al.* references (U.S. 2006/0051747 and U.S. 2006/0063261) (hereinafter collectively "the Pau references"), as applied to claims 1, 7, 10, 12, and 16, and further in view of Halliday *et al.* (WO 99/51776)(hereinafter "Halliday"). Applicants respectfully traverse these rejections as hereinafter set forth.

As explained above, the Pau references may not be relied upon in a rejection of any of the claims under 35 U.S.C. § 103(a). Therefore, withdrawal of the 35 U.S.C. § 103(a) rejections of claims 1, 7, 12, and 14 through 16 is respectfully requested.

If questions remain after consideration of the foregoing, the Office is kindly requested to contact applicants' attorney at the address or telephone number given herein.

Respectfully submitted,



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